

Minutes of the Meeting of the
Arizona Game and Fish Commission
Friday, February 23, 2001 – 8:00 a.m.
Saturday, February 24, 2001 – 8:00 a.m.
Game and Fish Regional Office
9140 E. 28th Street, Yuma, AZ

PRESENT: (Commission)

Director's Staff

Chairman Dennis D. Manning
Commissioner Michael M. Golightly
Commissioner Joe Carter
Commissioner Sue Chilton
Commissioner W. Hays Gilstrap

Director Duane L. Shroufe
Deputy Director Steve K. Ferrell
Asst. A.G. Jay Adkins
Asst. A.G. Jim Odenkirk

Chairman Manning called the meeting to order at 8:00 a.m.

1. Executive Session – Legal Counsel

- a. *Forest Guardians v. APHIS*, CIV 99-61-TUC-WDB; *State of Arizona v. Babbitt*, CIV 98-0632-PHX-ROS; *Conservation Force v. Shroufe*, CIV 98-0239 PHX-RCB; *In Re General Stream Adjudication for the Little Colorado River and Gila River*; *Center for Biological Diversity v. Dombeck et al*, CIV00-1711-PHX-RCB and *Mark Boge v. Arizona Game and Fish Commission & Shroufe*, CIV 2000-020754

1. Executive Session – Purchase and Lease of Real Property

- b. Discuss purchase or lease of lands related to the Bellemont Shooting Range

1. Executive Session – Legal Advice

- c. Legal issues related to big game management in Arizona

1. Executive Session – Personnel Matters

- d. Discussion of matters including the Director's goals and objectives

1. Executive Session – Legal Advice

- e. Legal issues related to hunting in the McDowell Mountain Preserve

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION GO INTO EXECUTIVE SESSION.

Vote: Unanimous

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Meeting recessed 8:00 a.m.

Meeting reconvened 9:12 a.m.

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Chairman Manning called the meeting to order at 9:12 a.m. Members of the Commission and Director's staff were introduced. The meeting followed an addendum dated February 22, 2001.

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2. An Update on Current Issues, Planning Efforts and Proposed Projects on Federal Lands in Arizona

Presenter: John Kennedy, Habitat Branch Chief

A copy of the printed update, which was given to the Commission prior to today's meeting, is included as part of these minutes.

Information was provided on three items that were not in the federal lands update.

The first item was with regard to national monuments. Two days ago, the Department reviewed a letter from the Bureau of Land Management (BLM) Office in Washington, D.C. The subject of the letter dealt with BLM's Interim Management Guidelines for the management of the national monuments, specifically language that the Department had not seen regarding the use of game carriers. Game carriers will be limited to use on roads and trails that are designated specifically for the use of deer carriers. The Guidelines had been modified to reflect that prohibition. Department staff will be recommending to the Director that a request be made to BLM to allow for modifications to the Guidelines. The Department needs to insure that issues of access, wildlife-related recreational uses, and hunting are resolved and are incorporated into the Interim Management Guidelines so that the Department is one step ahead in the process of developing management plans for the monuments.

The second issue was with regard to wild burro management in the state. There was a Wild Horse and Burro Advisory Board meeting on February 20-21, 2001, in Phoenix. The Department provided comment and copies were provided to the Commission.

The third issue was an update regarding the development of a CCP for Buenos Aires National Wildlife Refuge (NWR). Mr. Kennedy talked with regional staff of the U.S. Fish and Wildlife Service (FWS). There were a few interesting notes from that discussion. It was the FWS understanding that the document was not to be released to the public at that time; it was an internal agency review period. Commission and Department issues and concerns were reviewed and were 80% resolved. The next step was to schedule a meeting in March or April between Mr. Kennedy and the regional staff of the FWS, staff of Buenos Aires NWR, and the Department's regional supervisor to further discuss issues. The CCP for the Cabeza Prieta was moving along in the same direction.

Commissioner Chilton asked if there were other NWRs where the Department of Interior proposed a separate permitting system or was it unique to the Buenos Aires NWR to have

a separate permitting system. Mr. Kennedy stated it was not unique for a NWR to have a permit system. In most cases, the permit system is consistent with the state's hunting management, harvest strategy and goals and objectives. This was the intent of the Buenos Aires staff; they wanted to work with the Department to develop a compatible permit system.

Commissioner Carter stated he met with Congressman Kolbe earlier in the week to talk about concerns with the new monuments and refuges. The Commission had concerns about access and wildlife management, including harvest and removal, as well as maintenance of resources that support wildlife. States are experiencing wide interpretations of national policies and guidelines. Congressman Kolbe has offered, if the Commission was interested, to facilitate a roundtable discussion between people at all management levels, including the Department and Commission, to try to get issues on the table. If issues were not resolved at this level, Congressman Kolbe would be willing to raise issues with Interior Secretary Norton. He suggested that the Department prepare a letter outlining issues and concerns and to convey to Congressman Kolbe its willingness to have such a meeting in the near future, particularly before hearings on the budget processes start the end of March. Mr. Kennedy noted Congressman Stump had a similar interest and asked the Department to get issues to his office by next week. If the Commission so desired, the Department could do a template letter to go to the entire Arizona delegation. Commissioner Carter agreed and stated the letter should be brief and outline issues the Commission and Department want to focus on. There was value in having all Commissioners sign the letter. Letters to Congressmen Pastor, Stump and Kolbe should be targeted towards convening roundtable discussions since the new monuments are in their districts.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION ACCEPT COMMISSIONER CARTER'S RECOMMENDATION.

Vote: Unanimous

Chairman Manning asked for further information regarding the Forest Service Regional Office direction that Section 7 consultations on NEPA-related actions that result in a "likely to adversely affect" determination will undergo consultations with the FWS Ecological Services Office in Phoenix rather than the Albuquerque Regional office. Mr. Kennedy stated it was a change in the way the USFS and FWS dealt with Section 7 consultations. It had to do with guidance criteria. The only issue as far as the Department is concerned is that there will be more time added to the planning process in environmental compliance for the allotments.

Commissioner Golightly asked when the NEPA analysis would be completed for the Heber-Reno sheep driveway in the Tonto National Forest. Mr. Kennedy did not know when the process would be completed. The Tonto National Forest wanted to complete a separate NEPA compliance process for the driveway independent of any allotment. Discussions have begun. Commissioner Golightly wanted the Department to investigate the Forest Service's intentions on whether or not separate NEPA processes would be applied to the sheep driveway and the AMP.

Comment from member of the public:

Jon Fugate, representing the Yuma Valley Rod and Gun Club (YVRGC), referenced interim management guidelines for the national monuments and the use of wheeled game carriers. He referenced burros and the EA for the Three Rivers complex burro census and removal, which included the Alamo area. Some things were not included in the EA. Exact locations were not specified where burros would be removed; burro removal was not advocated from the Alamo Wildlife Area and the Refuges first and there was no reference in the FWS's biological opinion (if burros are eating cottonwood trees at a level higher than 10%, the burros have to go). He was concerned that there was no effective coordination with the Department in the development of the EA. Three herd management areas were being encompassed into one. The Wilderness Stewardship Policies for the FWS were out for public comment; these were the same as for BLM. They are interpreting the Act the way they think was the intent of Congress; i.e., wheeled-game carriers, and the Act was equal to the original purposes for which Refuges were set aside. This is not what the Act stated. Equal was nowhere in the Act; the word was "supplemental". Supplemental could mean "equal"; the YVRGC could live with equal, but because of past experiences in working at the national level with BLM and FWS, there was concern.

Director Shroufe added that a lot of the regulations in the *Federal Register* were withdrawn by the new administration. He believed that at the International Association of Fish and Wildlife Agencies (IAFWA) meeting in March there would be unanimous effort by all states, and IAFWA will give direction, to have more of these withdrawn or postponed for further review by the administration.

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3. Request for the Commission to Approve an Agreement (for Right-of-Way) with Arizona Public Service (APS) for the Purpose of Continuing Service for Installation, Operation, and Maintenance of Electric Poles and Lines that Provide Electricity to Irrigation Well Sites #2 and #4 at the Powers Butte Wildlife Area, Maricopa County, Arizona

Presenter: John Kennedy, Habitat Branch Chief

Arizona Public Service (APS) has requested that Agreement #KR88-2177-CIV and #KR88-2279-CIV for rights-of-way for continuing service for installation, operation, and maintenance of electric poles and lines providing electricity to irrigation well sites #2 and #4 at Powers Butte Wildlife Area be combined and extended into one agreement.

This agreement would serve to grant APS a 10-year, five-foot wide utility right of way to provide necessary maintenance for the Department. The Department has determined that electric service is necessary for irrigation and operation of Powers Butte Wildlife Area, which is of direct benefit to the Commission. This right-of-way is in the public interest and is consistent and compatible with the operation of the Powers Butte Wildlife Area. Because of this, fees have been recommended at \$1.00 for the term of the agreement. This agreement has been approved as to form by the Attorney General's Office and will remain in effect through November 1, 2008.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE AGREEMENT (FOR RIGHT OF WAY) WITH APS FOR THE PURPOSE OF CONTINUING SERVICE TO INSTALL, OPERATE AND MAINTAIN ELECTRIC POLES AND LINES THAT PROVIDE ELECTRICITY TO IRRIGATION WELL SITES #2 AND #4 AT POWERS BUTTE WILDLIFE AREA, AND EXECUTE THE AGREEMENT AS ATTACHED. IN ACCORDANCE WITH TITLE 17-241.B, THE AGREEMENT IS SUBJECT TO THE APPROVAL OF THE GOVERNOR AND STATE LAND COMMISSIONER.

Vote: Unanimous

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4. Request for the Commission to Approve an Agreement with the Federal Aviation Administration (FAA) to Develop and Maintain a Non-Directional Beacon at the Three Points Shooting Range in Pima County, Arizona

Presenter: John Kennedy, Habitat Branch Chief

Since 1980, the Commission has leased a small portion (approximately 1/3 acre) of the Three Points Shooting Facility to the FAA for the purpose of developing and maintaining a Non-Directional Beacon necessary to assist in the safe landing of airplanes at Ryan Field. The 10-year lease agreement was renewed in 1990 and the FAA would like to renew the agreement for an additional five years.

The Department has prepared the proposed five-year agreement that authorizes the FAA to access the site and to perform all necessary maintenance of the equipment. Rental fees of \$1200 per year are recommended. The rental fees were derived from fee schedules developed and used by the State Land Department for similar type uses. The Department has reviewed all the potential impacts of the proposed FAA uses and has determined the terms of the agreement will not negatively impact or change the original uses of the Three Points Shooting Facility.

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE AN AGREEMENT WITH THE FAA FOR THE PURPOSES OF ACCESSING, DEVELOPING, AND MAINTAINING AIRCRAFT LANDING EQUIPMENT AT THE THREE POINTS SHOOTING RANGE FACILITY, AND AUTHORIZE THE DIRECTOR, AS SECRETARY TO THE COMMISSION, TO EXECUTE THE AGREEMENT, AS ATTACHED, OR AS APPROVED OR RECOMMENDED BY THE OFFICE OF THE ATTORNEY GENERAL.

Vote: Unanimous

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5. Request for the Commission to Approve the Assignments of Lease or Permit and Assumption of Interest Transferring State Grazing Leases Acquired with the Purchase of the Cross L and Ocote Ranches to the State of Arizona and to Approve a Sublease for Grazing and Leased Lands Identified in the Draft Grasslands Wildlife Area Grazing Plan to the Livestock Operators that were Under Sublease to the Town of Springerville at the Close of Escrow

Presenter: John Kennedy, Habitat Branch Chief

The Arizona State Land Department (SLD) grazing leases were purchased from current holders into the name of the Commission with the acquisition of Cross L and Ocote Ranches in Apache County. In a letter dated April 19, 1999, the State Land Commissioner advised the Department that the SLD would consent to an assignment of a grazing lease with the understanding that 1) the land will be grazed through the use of a sublease between the Department and livestock operator and 2) should the Department intend to use other areas of the overall lease for purposes other than grazing, the Department should apply for a commercial lease or special land use permit so that other uses besides grazing are legitimate.

With the purchase of Ocote Ranch, an existing grazing sub-lease between the Town of Springerville and the current livestock operators was transferred to the Commission. An agreement between the sub-lessees and the Commission is necessary to describe the terms and conditions of day-to-day operations of the grazing sub-lease.

The SLD also required that the Department submit a Grazing Plan for those lands identified by the Department to be sub-leased. The Department's draft Grazing Plan identifies the lands proposed for grazing purposes and also the lands identified for purchase or management under a Special Land Use Permit (SLUP). The applications for a SLUP will be prepared and submitted to the SLD with the approval of our recommendation for a sub-lessee. At this time, our short-term plans call for a recommendation to allow the current livestock operators to continue grazing the lands identified in the Department's Grazing Plan.

The Commission acquired 2/3 of the water rights and a majority of the deeded lands associated with the Butler Estate (family ranching operation of the Cross L and Ocote Ranches). Ownership of the remaining interest of the ranchland and water rights lies with the current livestock operators on the SLD grazing sublease. Thus, partitioning or splitting of the land, water rights and associated access routes brings management issues to the forefront that should be considered by the Department and current livestock operators.

Because the land and water rights are interrelated through ownership of several stakeholders, cooperation between all parties is essential to the success of all proposed and future management activities and goals. The land parcels acquired by the Commission are not contiguous parcels requiring access through private and SLD parcels for which no rights-of-way or other legal access currently exist. The water rights are also not entire or exclusive to the Commission. Successful management and use of the water resources will require cooperation between the Department and the current livestock operators and sharing of maintenance responsibilities since all parties depend on the same water distribution system.

Currently, all other issues pertaining to specific management considerations have not yet been fully identified by the Department. The Department has received verbal offers from the current livestock operators that involve the exchange of water rights for SLD grazing leases purchased by the Commission. The Department has not yet quantified the amount of water available for use within the Grasslands Wildlife Area. Requests have been received from current grazing sub-lessees for use of additional surface or ground water,

which they feel is necessary for livestock management purposes. The Department cannot examine all options available for water use in the area until a detailed hydrologic and legal assessment of water rights is completed that identifies all water available to the Commission, current livestock operators, and possibly others.

The hydrologic report will include, but not be limited to: 1) the identification of all lawful water users on the system; 2) legal and practical methods of water transportation; 3) amounts of water available to each user with legal and proposed water use locations; 4) identification of senior and junior water users on the system and 5) recommendations for severance and transfers of water rights necessary for the success of all stakeholders.

When legal and practical uses of the Department's water rights are identified, the Department is confident that all issues important to all parties may be resolved through agreement between the Commission and the other water rights holders. The issues to be discussed and resolved will include possible land and water exchanges, shared water rights uses, cost sharing for ditch management, shared water distributions systems, and legal access through Commission, private and SLD parcels. The Department is currently identifying all access routes necessary for livestock, vehicle and water distribution.

The Commission's primary goal is to manage the wildlife area and property resources, such as water rights, in the best interest of wildlife, particularly species of special concern, while at the same time, providing for the needs of the owners of interrelated lands and water rights in the area. The primary goal of the owners of the interrelated land and water rights is to manage their deeded and leased lands for their livestock operations. The Department believes common ground exists, and once the additional information regarding our water rights is obtained, appropriate selected land and water right exchanges and agreements of mutual benefit for access and management purposes may be developed with the adjacent landowners. The Department also, therefore, believes that a grazing sub-lease with the adjacent land and water rights owners in the Grasslands Wildlife Area vicinity is in the best interest of all stakeholders at this time.

Mr. Adkins explained recent events for Commission information regarding sub-leases. On Wednesday, the Arizona Supreme Court heard oral arguments in a case involving a challenge brought by some environmental groups. This challenged the authority of the State Land Department to limit state grazing leases for grazing purposes. They argue that these grazing leases ought to be leased by SLD for purposes other than just grazing, e.g., conservation purposes. One of the attorneys for the SLD, but not on this case, indicated that, in her opinion, the Supreme Court was not accepting the SLD's defense of its actions in this case. As for the bid process, Mr. Adkins believed that conservation organizations are able to bid much more than the bids submitted by the grazing lessees. It is presently unknown what the Supreme Court will do; it may take several months for a decision.

Mr. Kennedy noted that the sublease runs through 2003; it would probably run beyond that.

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE THE ASSIGNMENTS OF LEASE OR PERMIT AND ASSUMPTION OF INTEREST, WHICH WILL TRANSFER OWNERSHIP OF THE GRAZING LEASES

ACQUIRED WITH THE PURCHASE OF THE CROSS L AND OCOTE RANCHES TO THE STATE OF ARIZONA AND TO RECOMMEND MARY HELEN PETERS AND SARAH MARGE CRIGLER TO SUBLEASE THE STATE GRAZING LANDS IDENTIFIED IN THE DRAFT GRASSLANDS WILDLIFE AREA GRAZING PLAN.

Mr. Kennedy noted that none of the documents before the Commission today stated that this sublease would run concurrent with leases of adjacent properties, i.e., the Commission could take whatever action it deemed appropriate.

Chairman Manning had a question with regard to paragraph 10 on page 6 of the grazing plan, referencing the sub-lessee and other partners. He asked if there was a cost estimate and a commitment by any of the sub-lessees or partners, e.g., Arizona Antelope Foundation (AAF), as to their contributions towards the wells. Richard Remington, Region I (Pinetop) Supervisor, stated there were not. The Department would wait until the grazing plan was approved on cost estimates that would be of mutual benefit both to the livestock operation and to antelope. He noted there was a verbal commitment by the AAF to work with the Department on the Grasslands Area. The intent of the grazing plan was to graze 6000 acres of state land for antelope benefit. Chairman Manning wanted to see AAF's commitment in dollars.

Commissioner Golightly asked whether or not the Department can qualify as a lessee under the current law on a state grazing permit. Mr. Adkins stated yes; the SLD takes the position that governmental units are qualified to be state grazing leaseholders. The SLD recognizes state agencies as persons. Depending on the Supreme Court ruling, a governmental agency may be able to become a state grazing lessee and not be required to graze cattle.

Vote: Carter, Chilton and Gilstrap – Aye
Golightly voted Nay
Chairman voted Aye
Motion carried 4 to 1

Commissioner Golightly explained that he was not against grazing but he did not believe that the two permittees would cooperate with the Department. Chairman Manning voted in favor because it was only a short-term lease and cooperation could be demonstrated in the next few years.

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6. Request for the Commission to Approve the Memorandum of Understanding (MOU) Between the Commission and the Association of Biodiversity Information (ABI) for the Purpose of Working Cooperatively and Sharing Information on Special Status Species

Presenter: John Kennedy, Habitat Branch Chief

(For additional background information, see minutes for January 19, 2001, pages 3-6.)

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE MOU BETWEEN THE ABI FOR WORKING COOPERATIVELY AND SHARING INFORMATION ON SPECIAL STATUS SPECIES.

Vote: Unanimous

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7. Conservation Agreement for the Conservation and Assessment and Strategy for the Bald Eagle in Arizona

This item was deleted as noted on the addendum.

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8. Statewide Shooting Range Project Update

Presenter: Kerry Baldwin, Education Branch Chief

A briefing was sent prior to today's meeting to the Commission.

A new situation has arisen concerning volunteers carrying firearms at the Ben Avery Shooting Facility (BASF). One of the reasons supporting removal of firearms was a legal opinion from the Attorney General's Office. Mr. Baldwin asked for a copy of that opinion. Mr. Baldwin stated that the opinion we were looking for was whether or not the state had authority to prohibit employees from possessing firearms. For purposes of liability, volunteers are considered to be employees and volunteers are treated as employees while on duty. Current Department policy does not allow employees to carry firearms without permission from the Director or their supervisors. This has been an on-going liability issue for some time. Clarification from the Attorney General's Office stated the Department had the authority to make the decision it did with its line safety officers and other volunteers while on duty. A copy of the direction from the Attorney General's Office would be sent to the Commission. Chairman Manning had a problem with the policy and wanted alternatives to be considered.

Mr. Baldwin noted there were commissioned officers at BASF to perform law enforcement functions. If a firearm was needed for firearm demonstration/training purposes, volunteers would still be able to possess firearms for that purpose.

Mr. Baldwin checked with other ranges in Arizona. Most of the governmental ranges do not allow line safety officers to possess firearms unless they are commissioned officers. Individual sportsmen's groups or private clubs that operate ranges vary in practices.

Director Shroufe noted he and Deputy Director Ferrell participated in a conference call with the Governor's Office yesterday about this issue. The Governor's Office felt the same as the Department from a Risk Management standpoint. The decision the Department made was correct due to coverage and liability the state was assuming without proper training.

Mr. Baldwin gave an update regarding the exchange of the Rio Salado Shooting Range. Language has been developed that is agreeable to both sides to reduce our competition with the County on adjacent land so the Department does not compete with County facilities. The county will retain control of the microwave tower roads.

Mr. Adkins provided copies of the agreement for exchange of the County's Rio Salado (Usery Mountain) Shooting Range to the Commission.

Bellemont is moving forward. The Department has been working with the Forest Service within their criteria and constraints to insure that the land transfer process goes well. Major elements have been in appraisals. A new process has caused some delay and reinterpretations.

John Kennedy noted that there were some recent developments. Correspondence was received from the National Rifle Association (NRA) with regard to a distance/sound issue associated with the project. The correspondence supporting the Department's position has been forwarded to the Forest Service with the package to assist the Forest Service in addressing the comments received on the EA.

Mr. Kennedy also noted there were still issues to insure the exchange package was ready for the Land Ownership Adjustment Team. Commissioner Golightly stressed the need for all Commissioners to remain informed about Bellemont.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION TABLE ACTION ON THE RECOMMENDATION WITH RESPECT TO TRANSFER OF THE USERY MOUNTAIN SHOOTING RANGE TO LATER TODAY OR TOMORROW SO THAT IT HAS HAD A CHANCE TO LOOK THROUGH THE DOCUMENTS BEFORE CONSIDERING ANY ACTION.

Vote: Unanimous

Because Mr. Adkins would be leaving the meeting later today and would not be present tomorrow, Chairman Manning called for a recess to allow the Commission to read the documents provided by Mr. Adkins this morning.

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Meeting recessed 10:32 a.m.

Meeting reconvened 10:42 a.m.

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Commissioner Carter stated he spoke with Mr. Adkins regarding 1) Phase I EA completion and 2) findings beyond those that are normally expected. The Department's engineer did not note any beyond those that are normally expected.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION APPROVE THE AGREEMENT OF TRANSFER AND OWNERSHIP AND OPERATION OF THE USERY MOUNTAIN SHOOTING RANGE AS PRESENTED TODAY AND AUTHORIZE THE DIRECTOR TO EXECUTE NECESSARY DOCUMENTS.

Vote: Unanimous

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9. State and Federal Legislation

Presenter: Richard Stephenson, Legislative Liaison

March 9 is to be the last day for bills to be heard in the House of origin. April 6 will be the last day for the House to hear bills. April 13 will be the last day of conference committees and April 21 is the 100th day. Budgets will be done the week of March 5, subject to change.

Status was provided on bills for which the Commission has taken a position of support.

H2225: Watercraft Violations. The Department's Law Enforcement Branch recommended minor changes. References were overlooked regarding reckless operation of personal watercraft and not stopping for a peace officer. These offenses should be Class 2 misdemeanors. The legislative sponsor has no problem with the changes. The bill was restarted as a striker on H2230: Watercraft and Boating Violations. Things left hanging will be corrected when the bill gets to the Senate from the House. S1247: Watercraft; Registration Renewal and S1248: Watercraft Accidents; reporting passed out of the Senate 28-0. S1524: Hunting Contests has yet to be heard in the Senate. S1575: Watercraft Operator License and its amendments failed in the Senate.

A bill that the Commission opposes (H2212: Federal Monies; appropriation) has moved through the House.

Other bills were noted. H2481: Crop Damage Liability. The advice received from legal counsel is this would not apply to actions of free-roaming wild animals. H2514: Shooting Ranges that would grandfather all shooting ranges with noise issue is dead. S1364: All-Terrain Vehicles, addresses all vehicles being operated on a street or road must be licensed, registered and have insurance, including OHVs. A street or highway is defined as any public way open to travel. This year the bill's language includes maintained Forest Service roads under the definition of dirt roads. This excludes maintained roads that are graveled or surfaced. If there is an ungraveled or unsurfaced road that is maintained by the Forest Service, it will be considered a dirt road and the vehicle would not have to be registered. There are a lot of unmanaged roads on BLM lands; the sponsor amended the bill upon our suggestion to include BLM roads.

Chairman Manning referenced an article in a Wisconsin newspaper that referred to a state constitutional amendment to insure hunting, fishing (and trapping) in perpetuity. He asked what steps would need to be taken to amend Arizona's constitution. Mr. Stephenson stated a ballot measure would achieve that and could be done in two ways: 1) an initiative or 2) referendum. He stated to put the referendum on the ballot, it would technically not take two sessions but politically, he would have to gauge support. Chairman Manning stated he would like the Commission, after reading the article, to direct Mr. Stephenson to look into the feasibility of a state constitution change that would insure hunting and fishing as was already done in a number of other states. Since it would take two years in the Legislature to get it done, Chairman Manning wanted to see an attempt this year at a strike-all to get the first one out of the way. Mr. Stephenson stated that with the new rules in place regarding strikers, at this point in time, it would be difficult to get anything done this year. Director Shroufe reminded the Commission that

once the agency strikes out in an initiative or referendum, the Department is out of the picture and the issue would fall back onto the Commission. Chairman Manning stated it may be something the Commission may want to pursue in the future.

On the federal front, Director Shroufe reported that there was some money that came out of CARA. There was a bill passed on a budget item that provided the states with \$50 million; the states were looking at \$350 million for CARA. There was another \$50 million appropriated to the Department of Interior (U.S. Fish and Wildlife Service) to go to state wildlife agencies for grants; this appropriation is very complicated. The states desire to return to the Appropriations Committee to get the \$50 million to go to states. Arizona will be getting approximately \$1.3 million. There are commitments from the House and Senate sponsors of CARA to take this up again in legislation. There will be discussions on this matter at the North American Conference in March. The Department hoped to come before the Commission in March to ask for approval of the budget with this appropriation. The other issue that was successful last year through the Western Governors' Association was the \$8 million grant package to wildlife agencies for taking care of species about to become endangered even though it was not funded by Congress. Commissioner Carter referenced his discussions with Congressman Kolbe and Kolbe is still very receptive to any approaches to afford opportunities for states to be proactive in trying to prevent or reduce listings, followed by critical habitat designations. He would like some notes justifying why we would want to pursue the \$50 million being allocated to states for the program. If he has the information, he intends to focus on that approach and will try to solicit Secretary Norton's support. Commissioner Carter also wanted to continue the ESA block grant program.

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10. Call to the Public

There were no comments.

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12. Maryhelen "Sug" Peters' Petition for Road Closures on State Trust Land

Presenter: Fred Bloom, Development Branch Chief

On December 1, 2000, the Department received a Petition for Closure from Maryhelen "Sug" Peters of the MLY Ranch west of Springerville. The petition requested closure of two access points on State Trust land for the purpose of preventing further resource damage to soils and vegetation due to off-road driving. The request was for permanent closure through the signing and locking of gates.

The roads are seven miles west of Eagar off SR 260, approximately ¼ mile apart and access about 150 acres of State Trust lands that border the southern edge of the MLY Ranch. The eastern road is the main access to the ranch from the south and the western road dead ends at the ranch boundary.

On January 4, 2001, Department personnel and Commissioner Manning met with Ms. Peters on site to observe the damage, review the impact the closures would have to access and discuss alternatives. As a result, the Department and Ms. Peters reached consensus

on a compromise solution. The proposed compromise is to close the western road identified in the petition and to leave the eastern road open. This will allow for reasonable access to a large block of both private and State Trust lands.

Motion: Carter moved and Chilton seconded THAT THE COMMISSION APPROVE CLOSURE OF THE WESTERN ROAD ACCESS TO VEHICULAR TRAFFIC ONLY WITH FOOT ACCESS ALLOWED UNDER THE FOLLOWING CONDITIONS:

1. THE DEPARTMENT WILL SIGN THE CLOSURE SPECIFYING FOOT ACCESS AS PERMITTED.
2. THE DEPARTMENT WILL PROVIDE A FOOT ACCESS STYLE STRUCTURE ON THE FENCELINE AT THE CLOSURE AREA.

Vote: Carter, Chilton and Gilstrap – Aye
Golightly – Nay
Chairman voted Aye
Motion carried 4 to 1

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14. Overview and Update on the Development of National Policy and a National Management Plan for Invasive Species

Presenter: Larry Riley, Fisheries Branch Chief

A slide show was presented relating to the history and development of a National Management Plan for Invasive Species. Development of this Plan was required as a result of a federal Executive Order (13112) issued in February 1999. The presentation briefly addressed the history of development of the Plan and what prompted it; how the Department and International Association of Fish and Wildlife Agencies have been involved in the Plan, and the outlook for the future.

The Heritage Public Advisory Committee (HPAC) has made recommendations through its Chair (Commissioner Carter) that the Department prompt the development of a statewide coordinating council to address the invasive species issue in Arizona. Before Mr. Riley's presentation, Commissioner Carter commented on this issue having broad ramifications through the nation and continent. Federal agencies have been moving forward with the implementation of a council to identify the methods in which invasive species are entering North America. It was the hope of HPAC that the Commission would direct the Department to facilitate a gathering of appropriate state and federal agencies for the purpose to have dialog and to garner support for such a council being formed, with concurrence by the Governor's Office, on a state level.

Mr. Riley noted during his presentation that he did not know what the new (federal) administration's perspective was on implementation of the Policy.

The Plan recognizes the greatest risks are at the international boundaries; this is where the federal government needs to focus its initial role and that is to preclude the accidental or illegal intentional introduction of potentially harmful invasive species. One of the things the Plan focuses on is the risk to endangered species throughout the world and this is used

as part of the justification as to why this is so important for the development of national policy.

Recommended in the Plan were:

- 1) The federal government should provide leadership and coordination that includes building the states' capacities and capabilities to deal with invasions within the U.S. There has to be a partnership between the federal government, state governments and stakeholders in order to address effectively invasive species.
- 2) Prevention is the first line of defense.
- 3) Early detection and rapid response
- 4) Control and management mechanisms
- 5) Restoration after eradication of the invasive species
- 6) International cooperation
- 7) Recognition of Research
- 8) Recognition need to manage and provide information to the public

After further discussion after Mr. Riley's presentation, Commissioner Carter thought there may be an opportunity to direct the Department to gauge the interest of the Governor's Office to see if it would be appropriate to take the lead in facilitating a first meeting of the appropriate land management and other agencies. The purpose of the meeting would be to inform them of this issue and to see if there is a desire to look at a broad program, which he hoped, if it occurred, would enable us to go back to a number of regulatory process agencies with the new administration to responsibly allow us to do what was needed.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION DIRECT THE DEPARTMENT TO GAUGE THE INTEREST IN THE OFFICE OF THE GOVERNOR AND, IF THERE IS INTEREST, TO FACILITATE AT LEAST AN INITIAL MEETING TO DETERMINE INTEREST FOR DISCUSSIONS ON THIS ISSUE.

Commissioner Gilstrap stressed the importance of involvement of the Governor's Office and the Arizona Department of Agriculture.

Vote: Unanimous

Director Shroufe noted that the Department served as the Governor's representative for aquatic invasive species and the Department has already put together a similar meeting of state agencies to talk about getting their input. Mr. Riley stated that an aquatic nuisance species draft plan was initiated in 2000. Under the Nonindigenous Aquatic Nuisance Species Control Act, it is possible, once there is a Plan approved by the state governor, to apply for grants through the Department of the Interior and others in order to help organize and develop a program. Arizona's Plan has not been finalized but it is hoped it could be taken to an Invasive Species Council.

Director Shroufe stated the Department has laid the groundwork. The Department of Agriculture was a partner in the Aquatic Nuisance Plan.

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Meeting recessed at 12:02 p.m.

Meeting reconvened 12:14 p.m.

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15. Consideration of the Revised North Kaibab Game Cooperative Agreement**Presenter:** Ron Sieg, Region II (Flagstaff) Supervisor

At its April 15, 2000 meeting, the Commission directed the Department to amend the current North Kaibab Game Cooperative Agreement with the Kaibab National Forest to increase the fee charged to Unit 12A deer hunters from \$5 to \$15 and to include a process to allow the fee to be charged hunters purchasing a non-permit archery deer tag for use in Unit 12A.

The Department and the Kaibab National Forest have amended the Agreement to accomplish this direction. At the request of the Forest Service, the new Agreement follows the format of the Sikes Act. The Agreement will establish a stamp which, when attached to the hunter's license, will allow that individual to archery deer hunt in Unit 12A.

The Agreement will require development of a five-year plan of habitat projects to be funded by this fee. Currently, the Department and Forest Service have a less formal project planning process. The Department supports this change which should allow for more efficient planning and scheduling of personnel to implement these projects.

Commission Rule R12-4-102 will need to be amended to implement the fee increase. Currently this rule is scheduled for review beginning July 2002; this would result in the fee increase being effective in May 2005. The Commission may choose to open this rule earlier.

Director Shroufe noted that unless it was an emergency, the Department preferred to open rules during the normal review schedule.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE AMENDED NORTH KAIBAB GAME COOPERATIVE AGREEMENT AS APPROVED BY THE ATTORNEY GENERAL'S OFFICE AND TO INITIATE THE RULEMAKING PROCESS FOR R12-4-102 TO IMPLEMENT THE FEE INCREASE UNDER THE NORMAL RULEMAKING REVIEW PROCESS.

Vote: Unanimous

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16. Commissioner Committee Appointments**Presenter:** Duane L. Shroufe, Director

Director Shroufe gave background. This issue arose from the Open Meeting Law requirements.

Individual commissioners represent the Commission on various standing committees, including the Heritage Public Advisory Committee, the State Habitat Partnership Committee, the Wildlife Assets Committee, the Name-the-Range Committee and the Landowner/Lessee Sportsman Relations Committee. Individual appointments sometimes change on an annual basis.

It was noted that the charter for the Landowner/Lessee Sportsman Relations Committee would have to be amended to provide for a commissioner to be on the Committee in a liaison capacity.

Chairman Manning recommended the following appointments:

Commissioner	Committee
Carter	Heritage Public Advisory
Golightly	State Habitat Partnership
Golightly (co-chair)	Wildlife Assets
Manning	Name-the-Range
Chilton	Landowner/Lessee Sportsman (Access)
Gilstrap (co-chair)	Wildlife Assets

Regarding more information on a new committee, Jim Burton, Information and Education Division Assistant Director, stated it was an internal committee to the Department formed to fulfill the direction provided by the Commission regarding economic development at Ben Avery Shooting Facility. There is no formal public process on this committee.

Chairman Manning recommended additional appointments:

Commissioners	Committee
Manning and Gilstrap	Ben Avery Economic Development

Chairman Manning stated that, in the past, the Chairman has made designations prior to the implementation of this portion of the Open Meeting Law.

Motion: Gilstrap moved and Carter seconded THAT THE CHAIRMAN'S RECOMMENDATIONS BE ACCEPTED.

Director Shroufe clarified that these appointments would not be permanent. Chairman Manning stated these would be at the Commission level until it changes. Changes would be brought back to the Commission in a public meeting.

Mr. Burton explained the purpose of the newly-formed committee for economic development at Ben Avery Shooting Facility. Several individuals from the Department are on the committee to develop a Request for Proposal (RFP). The RFP is to be finished by mid summer with anticipation of being advertised in *The Wall Street Journal* to find a suitable developer for those properties. Issues will be further discussed in executive session tomorrow. One of the developers requested the Department to provide an unsolicited presentation. In the process, Commissioner Gilstrap was invited to attend that particular presentation since he has developed other facilities and his expertise would

assist the Department. Commissioner Carter stated it was important to maintain dialog and involvement but a process needed to be followed; the Chairman needs to provide direction.

Commissioner Gilstrap noted one of the keys to this type of committee is to utilize someone with expertise in the community who could be involved because of his or her ability to give input as a committee member.

Director Shroufe clarified that for the time being the position of Commission chairman would be a permanent member of the committee and Commissioner Gilstrap would be the other representative from the Commission.

Vote: Unanimous

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18. Director's and Chairman's Reports

Director Shroufe met with the commanding colonel for the Army Corps of Engineers (Los Angeles District) about bringing money into the state to help with programs. With the loss of Heritage monies, this money is important to the Department.

Director Shroufe attended meetings in the Governor's Office regarding Heritage funding and trying to get the Governor's Office attention on declining revenues from Heritage.

Director Shroufe and John Kennedy have been working with the Arizona Department of Transportation on issues. A meeting was held with their district engineers which resulted in better cooperation on projects between the two agencies.

Director Shroufe attended the trainee graduation from the law enforcement academy.

Richard Remington and Ron Sieg put together a meeting with the Hopi dealing with the Hopi buying state land and asking for trust status. Mike Anable, State Land Commissioner, is concerned about getting market value out of the land. Antelope hunting and access to the Raymond Ranch buffalo ranch is in question. The Hopi are willing to work with the Department on our needs. The hunting public will be accommodated in some way even though they will be hunting on Indian land. Commissioner Carter asked if there was enabling legislation in Congress that deals with the change in status of the land, will the various agreements be a part of that version or will there be separate MOUs. Director Shroufe stated there would be stand alone MOUs. He believed in the Navajo-Hopi land settlement there was a process to automatically have the Interior Secretary declare that trust land. Mr. Sieg stated it was his understanding also.

Director Shroufe attended an AORCC meeting in Yuma. He represented the state and the United States at the North American Bird Conservation Initiative meeting in Mexico

Commissioner Chilton asked about the Hopi land purchases. She asked if the new Interior Secretary was obligated to proceed with rubber-stamping the process or could she state that consideration of historic uses have to be written into the agreement. Director

Shroufe thought that unless the delegation does not change a lot, there was no political support to do anything but put the land into trust status. The delegation supported this bill in the past.

Commissioner Carter asked that the Department provide the Commission with the status of efforts for public access in southeastern Arizona.

Chairman Manning spent time with Representative Flake and the ranching community in the Snowflake-Taylor area. A tour was taken; a lot of elk was seen the first day.

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19. Commissioners' Reports

Commissioner Chilton attended the winter meeting of the Arizona Cattle Growers Association. She talked with Representative Flake. The Altar Valley Conservation Alliance is going to be meeting next Friday on wildlife issues in the valley.

Commissioner Carter stated he did not give a report at the January Commission meeting. Since the December meeting, he met with the new Graham County attorney regarding cooperation on prosecution issues. He attended the WAFWA mid-winter business meeting in San Diego in January; some issues discussed were forest health and grasslands. He chaired the Heritage Public Advisory Committee meeting. He testified in the Legislature on the Senate confirmation hearings for Commissioners Gilstrap and Chilton. He also attended the budget hearings in the Legislature. On January 23-25, Deputy Director Ferrell and he attended meetings with members of the House and Senate Appropriations subcommittee regarding the Department's budget proposals. On January 30-31, the same meetings occurred, with Commissioner Gilstrap's participation. On February 16-17, Commissioner Manning and he spent time with ranchers and Representative Flake. The importance of management planning was stressed at these meetings. On February 19, he met with Congressman Kolbe to discuss issues on the management of and interpretations and applications of policies on both the new monuments and refuges throughout the state.

Commissioner Golightly was involved in the community on shooting range issues.

Commissioner Gilstrap met with Director Shroufe and the Governor's Office regarding the loss of Heritage revenues. He spent time in the Legislature regarding the Department's budget.

He attended a Ben Avery Shooting Facility meeting and attended the meeting of the Arizona Antelope Foundation.

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Meeting recessed at 1:10 p.m.

Meeting reconvened 1:35 p.m.

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11. Hearings on license revocations for violation of Game and Fish codes and civil assessments for the illegal taking and/or possession of wildlife

Presenter: Leonard Ordway, Law Enforcement Branch Chief

Record of these proceedings is maintained in a separate minutes book in the Director's Office.

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13. An Update on the Scottsdale City Council's Deliberations concerning Hunting in the McDowell Mountain Preserve

Presenter: John Kennedy, Habitat Branch Chief

The Executive Assistant to the Mayor of Scottsdale was introduced as was Joe Yarchin, Region VI (Mesa) Urban Wildlife Specialist.

A briefing was given to the Commission on the actions taken by the Scottsdale City Council took to stop hunting in the McDowell Mountain (Sonoran) Preserve (Preserve).

For the past few years, the Department has been working with the City of Scottsdale to develop a plan for future management of the Preserve. Early in the process, the Department conducted a public survey to determine the level of support for hunting on the Preserve. Results indicated that more than 66% of Scottsdale residents did not favor hunting in the Preserve. This opposition was due to a perceived public safety issue and the potential for damage to the wildlife of the McDowell's.

During the past 18 months, the Department worked with the Preserve Commission to dispel any concerns it might have about hunting and to ensure the facts surrounding hunting were aired. After discussions, both the Department and the Preserve Commission recommended that the Department and the City of Scottsdale enter into an Intergovernmental Agreement (IGA) for management of recreation within the Preserve. Hunting would be allowed but highly regulated. Data would be gathered to determine the effects, if any, of hunting on wildlife and there would be an annual evaluation of all recreation within the Preserve. The Preserve Commission made this recommendation to the City Council in October 2000.

To allow the City Council to better understand what an IGA was and how it might operate, the Preserve Commission suggested that the City of Scottsdale staff set up a work session. Unfortunately, this work session never occurred. One of the Council members put the issue of hunting in the Preserve on the agenda for January 22, 2001. At the end of the Council discussion on hunting in the Preserve, there was a 3 to 2 vote to ban hunting within the Preserve. The City Council cannot ban hunting (only the Game and Fish Commission can), but what it did do was to direct City staff to draft regulations to make it impractical to hunt in the Preserve.

At the same meeting, the City Council also indicated it wanted to start a discussion on entering into an IGA. This discussion was scheduled for February 13, 2001. Because the Department felt it necessary to get further input from the Commission before continuing or stopping discussions of an IGA, the Director cancelled the Department's participation at that meeting.

Commissioner Gilstrap stated the opportunity to hunt both from a recreation and wildlife management perspective is important and has been traditional in that area. It would be a

major loss to have restrictions. The Commission needs to exercise a process to allow hunting in the Preserve.

Mr. Yarchin stated there have been discussions to put forth an IGA before the City Council. The IGA is still in the beginning stage. Director Shroufe noted the Council's action last month put a damper on the direction we were going in formulating the IGA. One of the issues the Department was going to negotiate in the IGA was the ability to hunt in the core area. The Department was looking for direction from the Commission to either proceed to work out something with hunting being a component in light of the Council's vote or to drop the issue.

The issue was further discussed. Chairman Manning summarized that the Commission wanted to reestablish dialog with the City and try to point out the consequences of what this ban might produce.

Motion: Gilstrap moved and Chilton seconded THAT THE COMMISSION RELAY TO THE CITY OF SCOTTSDALE THAT IT DESIRES THE ABILITY FOR HUNTING TO CONTINUE IN THE AREA.

Vote: Unanimous

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20. Approval of Minutes

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION APPROVE THE MINUTES FOR JANUARY 3, 2001, JANUARY 19, 2001 AND NOVEMBER 20, 2000, AS CORRECTED AND AMENDED.

Vote: Unanimous

The minutes for October 12, 2000 and December 8, 2000 were signed.

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17. Call to the Public

There were no comments.

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Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION GO INTO EXECUTIVE SESSION FOR ITEMS B AND D NOTED ON THE ADDENDUM.

Vote: Unanimous

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Meeting recessed 2:08 p.m.

Meeting adjourned 3:57 p.m.

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Saturday, February 24, 2001 – 8:00 a.m.

1. Executive Session – Purchase of Real Property

a. Purchase or lease of lands related to the Ben Avery Shooting Facility

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION GO INTO EXECUTIVE SESSION.

Vote: Unanimous

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Meeting recessed at 8:00 a.m.

Meeting reconvened at 9:10 a.m.

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Chairman Manning called the meeting to order at 9:10 a.m. Members of the Commission and Director's staff were introduced. The meeting followed an addendum dated February 22, 2001.

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2. Request to Adopt Notice of Final Rulemaking on R12-4-316: Possession, Transportation and Importation of Live Baitfish, Crayfish and Waterdogs

Presenter: Mark Naugle, Rules and Risk Management Manager

(For additional background information, see Commission meeting minutes for October 21, 2000, pages 24-30 and for January 19, 2001, pages 11-12.)

Director Shroufe prefaced the presentation of this item by stating that the Department's recommendation was "as proposed", which means the Department's recommendation was the same as it was in October (statewide ban).

Mr. Naugle stated the Department received 24 responses on R12-4-316. Twenty-one responses were in opposition to the exemption for the Yuma area; one was in support of the exemption and one suggested that the Department allow the live transport of crayfish for consumption. One letter from the U.S. Fish and Wildlife Service's Southwestern Regional Office urged the Department to consider active efforts to 1) repeal the further dispersal of existing crayfish species; 2) prevent the introduction of other crayfish species and 3) where feasible, to consider eradication of existing populations from selected sensitive sites that have already been invaded. In addition, stakeholders who commented on the original slate of crayfish rules overwhelmingly supported a statewide ban on the transportation of crayfish.

Prior to today's meeting, the Commission and Department's subject matter owners were provided copies of all but three of the written comments. The Department received the three latest comments yesterday. Two of the three requested that their information be read into the record. The Commission was provided copies of the letters; copies were provided for inclusion into the record.

Members of the public making comment:

Justin Herrera, member of the Yuma Valley Rod and Gun Club, stated the exemption for Yuma made sense. A map was shown and described of the Yuma canal system.

Bryan Herndon, member of the Yuma Valley Rod and Gun Club, stated the exemption for Yuma made sense.

Dr. Philip Fernandez, professor at Grand Canyon University, recapped the major points in the rule as proposed by the Department. Crayfish were not native to Arizona. This has huge implications since the native species don't know how to relate to crayfish. Crayfish are a non-native, invasive species in Arizona. All the research done demonstrates that crayfish are invasive and destructive. This is a comprehensive body of research and is not limited to Arizona. There was public support on this concept of a statewide rule. It was essential to note that the Department has recommended a statewide ban twice.

Dr. Fernandez addressed several points. It has been stated Rule R12-4-316 solves no problems and creates no problems for this particular area. This almost states there is no problem; people brought in crayfish. Crayfish create a problem when they spread. Another issue is that the canals, drains, backwaters and the river itself are continuous waters and the waters are isolated from the rest of the state. There has been a struggle with a way to word the rule so fishermen can take live crayfish from one place and move them to another without being in violation of R12-4-316. There was a reason why this cannot be worded; the waters are interconnected and they are not isolated. Transport must be banned around these waters. It has been noted the Gila River is a "dry" river but there is evidence it is not. The Rio Grande leopard frog is proof of that. The frog is a non-native, invasive species introduced in Yuma and they have moved up this "dry" riverbed to Phoenix. The fact that the waters are interconnected supports the concept that a comprehensive rule is needed. Another point raised was that biologists familiar with the area have been quoted that there is no way to remove crayfish from this exempted area. This is a separate issue; this deals with live transport, not with removal of crayfish from this area. Also, if they were removed from the area, it has been mentioned they might impact endangered species, e.g., Yuma clapper rails that feed on crayfish. The clapper rail existed for a long time before crayfish were introduced. Even though crayfish may be the preferred food of the rail, it is not the historical case for the major part of the existence of the rail. Therefore, the rail would exist if crayfish were reduced. The U.S. Fish and Wildlife Service supported a comprehensive rule that would include this area.

Dr. Fernandez stated that public diversity struck him on this rule. He named several organizations, agencies and groups that favor a statewide ban of crayfish. The people in Yuma were not being asked to stop using crayfish for bait; the people in Yuma should be sympathetic to a bigger cause to support this rule. Crayfish should be caught and used in areas being fished. He urged the Commission to endorse the recommendation of the Department.

Bill Kerekes, member of the Yuma Valley Rod and Gun Club, was concerned that the only water that comes into Yuma County is from the Gila River when it floods. He agreed with the Yuma Valley Rod and Gun Club that the Yuma area be exempted.

Jon Fugate, President of the Yuma Valley Rod and Gun Club (YVRGC), agreed that crayfish were an invasive species. He clarified the issue of isolation and connected waters on the map. The waterways are isolated and inter-connected. The whole issue is "same" water. The rule states "same water from site where taken." The YVRGC would support that if the waters within the exemption fit the rule. All they were asking for was a clarification of water that is within the proposed exemption is the same water from "site where taken"; if it is, the YVRGC could support the rule as written and there would not have to be an exemption to the rule. The Department is under the assumption that these would not be the same waters even though they are interconnected. The YVRGC could support the rule should the waters within the exempted area be classified as the same waters from the site where taken.

Dave Cohen, representing Trout Unlimited, reminded the Commission that this was not about isolated waters; it was about other things more significant than that. He mentioned that several years ago, the Game and Fish Department through the Heritage Fund contributed \$400,000 to the Lower Colorado River Multi Species Conservation Plan (LCRMSCP). This was an effort promoted by water and power interests to continue to deliver water and create hydropower while doing good things for 104 sensitive species that exist in the lower river. There is pending legislation (House and Senate) to contribute another \$165,000 to the LCRMSCP. This is Arizona's match to funds being contributed by California and Nevada. Yuma sits in the center of the conservation area and provides one of the best opportunities through demonstration projects to show it can work. What kind of a message does exempting Yuma send to the group? The issue goes beyond the isolated Yuma situation. It gives other areas in the state the opportunity to apply for exemptions as well. He supported the statewide ban.

The three latest letters were discussed and submitted as part of the official record. They were from Angela Pavlick, supporting a statewide ban; Jon Hoeksra, supporting a statewide ban and Thomas R. Jones, supporting a statewide ban.

Commissioner Golightly asked about the Department's outreach program to adjoining states to Arizona. He asked about the information received. Mike Demlong of the Nongame Branch stated the Department did several things. Larry Riley, Fisheries Branch Chief, met with the Colorado River Fish and Wildlife Council of the lower basin states. The staffs of those states support the Department's recommendation. Letters have been sent to each of the states. He summarized information received from adjoining states. Nevada and Utah have regulations that are similar or very restrictive than those proposed for Arizona. Colorado has some restrictions. New Mexico is looking to see if they have statutory ability to revise their regulations regarding crayfish. California will be looking at live bait issues this year, including crayfish. A letter was received from Mexico and they are concerned about what is done in Arizona and supportive of efforts in Arizona. A letter of clarification was received from the regional U.S. Fish and Wildlife Service office regarding discrepancies from wildlife biologists in the Yuma area. The Department's Information Branch has produced some good outreach efforts, e.g., video, brochure and article in *Arizona Wildlife Views*.

Commissioner Gilstrap asked Mr. Demlong for his definition of contiguous waters. Mr. Demlong stated it was Department's opinion that there was a series of artificial barriers, e.g., water control devices, pumping stations, weir boxes, that would help prevent the spread naturally of crayfish to the Colorado River and elsewhere. Humans were great

dispersal agents and crayfish move at a much greater speed by humans than by migration. It is the Department's opinion that these are independent waters; they are separate by somewhat cryptic barriers. There is one species of crayfish in the Yuma area; there is a different species at Alamo Lake. There are parts of the Colorado River that do not have crayfish yet.

Commissioner Carter thought that nothing is absolute, including science. He was concerned about crayfish, but he could not see beyond the issue of how this small geographic area would make such a large significant difference in the overall mission to deal with the crayfish issue. Mr. Demlong stated that if the exemption area were granted, it would provide a refuge or source of crayfish to spread throughout the state. Every time a crayfish is moved, other things are moved with it; e.g., parasites that affect native fish and sport fish. He noted that some people do not obey rules. By providing a statewide ban on live transportation of crayfish, the Department would be provided with one more mechanism to protect the rest of the state from an infestation of a new species or the spread of an existing species.

Commissioner Gilstrap asked Dr. Fernandez about contiguous water and his perspective on the canal systems and the river. Dr. Fernandez stated his comments were a distillation of his colleagues' rather than his personal opinion. He stated these waters flow directionally and barriers are not completely effective. What is at stake is the message the Department is sending the public. The public will wonder why there is an exemption for Yuma. The interconnected waters are no different from other waters in the state. Aquatic species use drainages. The waters are diverse and are being used diversely. People move crayfish.

Mr. Fugate noted the Commission makes different rules and regulations for wildlife on a daily basis. Chairman Manning noted people in Yuma feel these are interconnected waters.

Mr. Naugle gave the options:

- 1) Adopt and approve the Notice of Final Rulemaking to include a regional exemption pertaining to the possession, transportation and live crayfish in the Yuma area
- 2) Adopt and approve the Notice of Final Rulemaking first proposed last October that contains the original rule from the original Notice of Proposed Rulemaking
- 3) Terminate the rule package. (If the Commission elected this option, the associated rulemaking package containing Rules R12-4-313, 406, 407 and 411, will move forward separately to the Governor's Regulatory Review Council (GRRC). The rule package was scheduled to be reviewed by GRRC at its meeting of May 1, 2001, with an effective date of about May 25, 2001.

Motion: Gilstrap moved and Golightly seconded THAT IN LIGHT OF THE FACTS BY THE DEPARTMENT, MULTIPLE STATES, FISHING ORGANIZATIONS IN ARIZONA AND SCIENTIFIC KNOWLEDGE, THAT THE COMMISSION ACCEPT OPTION 2, WHICH IS A STATEWIDE BAN.

Vote: Golightly and Gilstrap – Aye
Carter and Chilton – Nay
Chairman voted Nay
Motion failed 3 to 2

Commissioner Carter explained his vote in that he lacked confidence in the assessment that these were all interconnected bodies of water. He was disappointed that the Department representative could state based on a one-day trip that the process has been reaffirmed. He believed all interested parties could have clarified this issue sometime ago since October.

Motion: Carter moved and Manning seconded THAT THE COMMISSION ADOPT OPTION 1.

Vote: Carter and Chilton – Aye
Golightly and Gilstrap – Nay
Chairman voted Aye
Motion carried 3 to 2

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3. Call to the Public

Jon Vance, representing self, asked the Commission to readdress the issue of use of aircraft to take wildlife. The rule (R12-4-319) needed a standard application for people to know what is right and wrong with regard to over flights. Presently, the rule was unenforceable. He felt no vehicle should be used to harass, molest, or hurt animals in any way. If a flight is made 48 hours before a hunt, an animal will not be in the same spot; however, the general herd can be located. He did not want planes flying during a hunt season. He wanted to see some sideboards on the rule with regards to the 48 hours. Prior to 48 hours of a hunt, flights could take place that would not adversely affect wildlife.

Joe Melton, Chairman of Constituent Affairs of the Yuma Valley Rod and Gun Club, referenced R12-4-309. The rule has taken away a lot of opportunities for other hunters to hunt in the field during the elk season. He opposed the rule and wanted the Commission to look at it. There will probably be a rule to have a season on prairie dogs; he specifically mentioned defining a boundary around Unit 10. He referenced possible open seasons for elk in August and February for areas of elk-free zones. He wanted the Commission to consider elk-free zone permits around the Alamo area. The YVRGC would be willing to work with the Department on the waterdog issue.

Jon Fugate, President of the Yuma Valley Rod and Gun Club, referenced R12-4-309. The hunting public should not be prohibited from hunting opportunities. The hunters would accept a prairie dog season if it were presented and worked out correctly.

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4. Future Agenda Items

Presentation by Lee Ferry guides at August Commission meeting in Flagstaff of their perspective of issues facing their business on the Colorado River

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Motion: Golightly moved and Gilstrap seconded THAT THE MEETING ADJOURN.

Vote: Unanimous

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Meeting adjourned 10:40 a.m.

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